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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	NO. 12-CR-750-LHK
	)	
Plaintiff,	)	<b>MOTION AND [PROPOSED] ORDER</b>
	)	<b>CONTINUING SENTENCING DATE FOR</b>
v.	)	<b>DEFENDANTS FIDENCIO AND ARTURO</b>
	)	<b>MORENO</b>
FIDENCIO MORENO, ARTURO MORENO,	)	
AND ELENA MORENO,	)	
	)	
Defendants.	)	
	)	

The United States, by and through Melinda Haag, United States Attorney, and the undersigned attorneys, hereby submits the following motion and proposed order continuing the sentencing date for defendants Fidencio and Arturo Moreno.

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**I. Background**

Defendants Fidencio and Arturo Moreno are currently scheduled to be sentenced on December 17, 2014. Based on this sentencing date, the final presentence report is due on December 3, 2014, the parties' sentencing memoranda are due on December 10, 2014, and any oppositions are due on December 12, 2014.

Mr. Kostyshak, counsel for the United States in this case, is preparing to try the case of United States v. Tilley, 1:14 CR 130, in the Middle District of North Carolina. That case had been set for trial on November 10, 2014 but was recently continued, over the government's objection, until December 1, 2014. The government's case-in-chief is expected to take 7-10 trial days, while the defense had represented that its case will take approximately one week, including at least one expert witness. Thus, as currently scheduled, Mr. Kostyshak will be unavailable for the sentencing hearing for Fidencio and Arturo Moreno because he will be in trial. The other assigned prosecutor, Ms. Wong, is no longer with the Tax Division as of September 8, 2014. While she is assisting with sentencing, Mr. Kostyshak is the primary attorney for the Tax Division. Because Mr. Kostyshak is, and has been, actively preparing for trial and anticipates being in trial during relevant time periods, he has not had sufficient time to prepare sentencing memoranda for the defendants or prepare for the contested sentencing hearing as to Mr. Arturo Moreno, particularly owing to the timing of the receipt of sentencing-related discovery from MJ Consulting.

In addition to Mr. Kostyshak's unanticipated unavailability, further discovery has been received in this case that is relevant to sentencing, particularly the loan modifications done by MJ Consulting. The documents were not received by Special Agent Geissler until November 5, 2014 (the subpoena return date was October 31, 2014). These documents were scanned and provided to defense counsel on November 6, 2014. Upon reviewing the records, government counsel has reason to believe that the production was incomplete, because certain documents that are known to exist were missing from the production. The government has requested that MJ Consulting produce these records, but has not yet received them. The documents that were produced, moreover, are not currently usable at sentencing or preparation for sentencing because many of the records are in Spanish. The government is in the

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process of getting the documents translated, which requires budgetary approval and also requires time for the translator to complete the request. The current estimated completion date is 8 to 10 business days. Even after the documents are translated, the government will need time to provide the translations to the parties and probation, as well as review them for use at sentencing.

Both defendants are out of custody and appear to be in full compliance with the conditions of their pretrial release. The government has conferred with defense counsel for Arturo and Fidencio Moreno and they do not oppose a continuance of the sentencing date. There have been no previous continuances to the sentencing date for Fidencio and Arturo Moreno. The parties previously requested that all three defendants in the above-captioned matter be scheduled for sentencing on January 21, 2014, but the request to consolidate the sentencing hearings was denied (Dkt. Nos. 102, 106). Ms. Elena Moreno's sentencing date was continued to January 21, 2014, based on unavailability of her counsel. (Dkt. Nos. 107, 108).

## **II. Conclusion**

For the foregoing reasons, the government respectfully requests that the date of the sentencing hearings for Arturo and Fidencio Moreno be continued until January 2014, to a date convenient to the Court and the parties.

Dated this 19th day of November, 2014.

Respectfully submitted:  
MELINDA HAAG  
United States Attorney

/s/ Katherine L. Wong  
KATHERINE L. WONG  
Assistant United States Attorney (EDVA)

/s/ Todd P. Kostyshak  
TODD P. KOSTYSHAK  
Trial Attorney, Tax Division

Attorneys for the United States

1  
2 **[PROPOSED] ORDER**

3 Pursuant to unopposed motion, and for good cause shown, it is hereby ORDERED that the  
4 sentencing hearing for Defendants Fidencio and Arturo Moreno, presently scheduled for December 17,  
5 2014 at 9:30 a.m., shall be continued to \_\_\_\_\_, 20\_\_ at \_\_\_\_\_.

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7 **IT IS SO ORDERED.**

8 DATED: \_\_\_\_\_

9 \_\_\_\_\_  
10 THE HONORABLE LUCY H. KOH  
11 UNITED STATES DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Government's Notice of Expert Testimony and Notice of Intent to Use Summaries was served on all parties named below on November 19, 2014.

☐ United States Mail, postage prepaid  
☐ Hand delivery  
☐ Facsimile Transmission (fax)  
☐ Federal Express  
☒ ECF Filing

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/s/ Todd P. Kostyshak  
Todd P. Kostyshak

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